vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3366 OF 1991

1. Narhar Krishnaji Kulkarni

2. Vishwanath Krishnaji Kulkarni
both residents of Kasaba Sangaon,
Tal.:Kagal, Dist.:Kolhapur ... Petitioners

V/s.

1. Ambubai w/o. Krishna Ghadyale
2. Maruti Krishna Ghadyale
3. Tukaram Krishna Ghadyale
4. Ganpati Krishna Ghadyale
5. Smt.Rukminibai w/o. Krishnaji Kulkarni
all residents of Kasaba Sangaon
Tal.:Kagal, Dist.:Kolhapur ... Respondents

Mr.S.V. Sadavarte for Petitioner
Mr.N.J. Patil for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 3, 2006**

ORAL JUDGMENT:

. The petition challenges the order passed by the Maharashtra Revenue Tribunal in Revision Application No.MRT/KP/50 of 1988. The Maharashtra Revenue Tribunal (for short, 'MRT') has allowed the Revision and set aside the orders passed by the appellate authority and the order of the Agricultural Lands Tribunal.

2. The undisputed facts of the case are as follows:

The land bearing Survey No.144 originally was owned by Krishnaji Kulkarni and another in equal shares. Krishnaji expired in 1955 leaving behind his widow and

his two minor sons, the Petitioners herein. The Petitioner No.1 was born on 1.9.1943 while Petitioner No.2 was born on 1.12.1949. Rukminibai obtained an exemption certificate under section 88C of the Bombay Tenancy and Agricultural Lands Act. She filed a tenancy case TNC No.464 of 1962 and obtained possession of 3 acres and 30 gunthas of the land on 4.10.1969. The respondents who were the tenants of Krishnaji were left with the remaining area of 2 acres 23 gunthas. After Petitioner No.1 attained majority, proceedings under section 33C commenced. The Agricultural Lands Tribunal, Kagal (for short, 'ALT') in Tenancy case No.32-G/85/A declared the purchase of the suit lands to be ineffective. The provisions of section 32P were then invoked. Being aggrieved by the order of the ALT, the Respondents filed Tenancy Appeal No.333/1986. This appeal was dismissed and the order of the ALT was confirmed. The Respondents then filed a Revision before the MRT under section 74 of the Act. The MRT has allowed the revision and set aside the impugned order. Aggrieved by this decision, the Petitioners-landlords have preferred the present petition.

3. The learned Advocate appearing for the Petitioners submits that the Revision Application is in the nature of a Second Appeal and ought to have been entertained by the MRT only if there was an error of law. He submits that there is no error of law in the present case and in fact, the MRT has not accepted the

findings of fact recorded by the lower Courts. According to the learned advocate, the landlords were certificated landlords and the purchase being declared ineffective under the Act, the landlords were entitled to possession of the remaining 2 acres 23 gunthas. The learned Advocate relied on the judgment of this Court in the case of *Kondiba Yeshwant Vidhate v/s. Gajanan B. Deshmukh,* **Spl.C.A. 203 of 1969 dated 13/18/19-10-1972** wherein this Court has analysed the scheme of section 33B and C of the Act and the provisos thereto. According to the learned Advocate, notice was given by the Petitioners for repossession of the land once Petitioner No.1 attained majority. The application filed by the Petitioner was not rejected and, therefore, it was necessary for the respondent tenants to inform the landlords of their desire to purchase the suit lands within a year.

4. The learned Advocate for the Respondent submits that the tenants had become deemed purchasers of the property. Rukminibai, the widow of Krishnaji had filed proceedings under section 33C(1) and (3) and had obtained the possession of part of survey No.144 which was owned by Krishnaji and in which they were tenants. Krishnaji had obtained possession of 3 acres and 30 gunthas while the tenants were left with 2 acres 23 gunthas. The learned Advocate submits that the present case is governed by section 33C(1) and not by section 33C(4); Rukminibai having already exercised her right

as a certificated landlord and obtained possession of part of the suit lands from the tenants. He submits that it cannot be the intention of the Legislature to permit the landlord who suffers from any of the disabilities mentioned in the Act, to make an application for repossession of the lands every time any of the members of the family are rid off the disability that they suffer. He submits that once Rukminibai had exercised her option it was not open for the Petitioners to start proceedings to repossess the lands in possession of the tenants when they attained majority. He urges that the tenants had become deemed purchasers of the two acres 23 gunthas when possession of only part of the lands owned by Krishnaji was given to his widow. He points out that the judgment in the case of *Kondiba Yeshwant Vidhate* (supra) aids his case. The learned Advocate also relies on the judgment in the case of *Dasharath v/s. Deoram Pandurang,* **2002(4) Mh.L.J. 447** wherein this Court has held that when one of the landlords who is a joint owner of the property is rid off his disability, by virtue of section 33C(1) of the Act the tenant becomes the deemed purchaser and cannot be disrobed of that effect.

5. The ALT and the Appellate Authority proceeded on the basis that the landlords were entitled to repossess the lands in possession of the tenants after one of them had attained majority. It is obvious that both the Authorities below have ignored the fact that Rukminibai

had already availed of her right under sections 33C(1) and 33C(3). Therefore, section 33C(4) would not be attracted. Rukminibai by filing tenancy case No.464 of 1962 had obtained possession of 3 acres and 30 gunthas. Therefore, the Respondents had automatically become deemed purchasers of the remaining land and it was only necessary to fix the purchase price under section 32P. As rightly argued by the learned advocate for the Respondents Rukminibai being a widow had exercised her option prior to 1.4.1962 by which time Petitioner No.1 had become a major. Under the Proviso to section 33C(1), the Respondents had become deemed purchasers. As held in the case of *Dasharath v/s. Deoram Pandurang* (supra), once the tenants are deemed purchasers of the land they cannot be divested of this land each time one of the landlords from a joint family is no longer a disabled landlord under the Act. If the submission of the learned advocate for the Petitioner is accepted it would lead to an incongruous position whereby the tenant would ultimately be left with no land if the landlords from a joint family are able to exercise their rights each time one of them overcomes the disability. That is not the object of the Act. Furthermore, the judgment of the case of *Nago Dattu Mahajan v/s.Smt.Yashodabai Huna Mahajan,* **1975 BLR LXXVIII 427** also supports the case of the Respondents. As held in the case of *Kondiba Yeshwant Vidhate (supra)*, a tenant of a certificated landlord is not required to inform his landlord and the Tribunal of his intention to purchase the land within

one year as required under subsection (4) of section 33C when the landlord has given notice and made an application as required under section 33(b)(1) and (3) and his application is finally rejected. Rukminibai's application had finally been rejected to the extent of 2 acres and 23 gunthas. Therefore, there was no need for the respondents to give any notice and their desire to purchase the land since they were deemed tenants of 2 acres and 23 gunthas.

6. In my view, there is no error in the order of the MRT. The MRT has corrected the error of law which was apparent on the face of the record. There is no need to interfere with the impugned order. The Petition is rejected. Rule discharged. No costs.